U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 6195673

Date: MAR. 5, 2020

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Extraordinary Ability)

The Petitioner, an actress, seeks classification as an individual of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner's evidence met only one of the ten initial evidentiary criteria for this classification, of which she must satisfy at least three.

On appeal, the Petitioner asserts that the Director's failed to conduct a thorough review of the evidence. She maintains that she meets at least three of the initial evidentiary criteria and is otherwise qualified for the benefit sought.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. *See* Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will withdraw the Director's decision and remand the matter to the Director for entry of a new decision.

I. LAW

Section 203(b)(1) of the Act makes visas available to immigrants with extraordinary ability if:

(i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,

(ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate sustained acclaim and the recognition of his or her achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then he or she must provide sufficient qualifying documentation that meets at least three of the ten categories listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010).

II. ANALYSIS

The Petitioner is an actress who has appeared in theatrical, film, television, and commercial projects. Because the Petitioner has not indicated or established that she has received a major, internationally recognized award, she must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x).

The Director found that the Petitioner met one of these ten criteria, relating to her participation as a judge of the work of others in her field. *See* 8 C.F.R. § 204.5(h)(3)(iv). On appeal, the Petitioner asserts that the Director erred in his assessment of evidence submitted with respect to several other regulatory criteria found at 8 C.F.R. § 204.5(h)(3).

Upon review, we agree with this assertion, as the Director's decision lacks a detailed analysis of the evidence submitted in support of the petition with respect to certain criteria, and does not appear to acknowledge the evidence the Petitioner submitted in response to a request for evidence (RFE). An officer must fully explain the reasons for denying a visa petition in order to allow a petitioner a fair opportunity to contest the decision and to allow us an opportunity for meaningful appellate review. *See* 8 C.F.R. § 103.3(a)(1)(i); see also *Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994) (finding that a decision must fully explain the reasons for denying a motion to allow the respondent a meaningful opportunity to challenge the determination on appeal).

As we do not find that the record as presently constituted establishes the Petitioner's eligibility for the benefit sought, we cannot sustain the appeal; however, we will withdraw the Director's decision and remand the matter for further review and entry of a new decision consistent with our discussion below.

As noted, the Director determined that the Petitioner provided sufficient evidence to satisfy the criterion relating to her participation as a judge of the work of others in her field, consistent with 8 C.F.R. § 204.5(h)(3)(iv). The record contains a letter from [redacted], president of the [redacted], who states: "We invited [the Petitioner] to be a judge of the acting

category for the [redacted] Film Festival, which she did in 2009, 2010, and 2011." The Petitioner provided no additional evidence relating to this criterion, and we disagree with the Director's determination that [redacted] letter alone sufficiently establishes her participation as a judge. The record does not contain any supporting documentation related to the [redacted] Film Festival, such as evidence that acting awards were given in the years 2009 through 2011.[1]

The Petitioner also claimed to meet the criterion at 8 C.F.R. § 204.5(h)(3)(i), which requires that she provide evidence of her receipt of lesser nationally or internationally recognized prizes or awards for excellence in her field of endeavor. In addressing this criterion in the denial decision, the Director states that the record "contains no probative evidence that you were named a recipient in any category for excellence in the field of endeavor"; mentions that the Petitioner submitted documents from the Internet Movie Database (IMDb) and generally dismisses such evidence as unreliable; and states "[y]ou submitted digital, self-made copies of documentary evidence that can be reduced or altered, but such documentation is inadmissible." The language in the Director's decision was copied almost verbatim from the RFE, and did not address the evidence or the lengthy letter that accompanied the Petitioner's RFE response, four pages of which were devoted to addressing how the evidence submitted was sufficient to satisfy the lesser nationally or internationally recognized prizes or awards criterion.

As noted by the Petitioner, the majority of the evidence submitted in support of this criterion was not derived from IMDb. Further, the Petitioner argues that she did not submit digitally altered copies of evidence and noted that it is unclear what evidence was deemed inadmissible. We agree with the Petitioner that neither the RFE nor the decision provided an explanation as to why her evidence failed to satisfy this criterion; the Director's general finding that the evidence was either unreliable or inadmissible was not adequate. We will remand this matter to the Director so that he can fully address and analyze all of the evidence and arguments relating to the awards criterion at 8 C.F.R. § 204.5(h)(3)(i).

We further note that the Director declined to review the evidence the Petitioner submitted to satisfy the criterion at 8 C.F.R. § 204.5(h)(3)(vii), which relates to the display of the individual's work at artistic exhibitions or showcases. As with the awards criterion, the Director's discussion of this criterion in the denial decision was copied verbatim from the RFE with no additional analysis of the evidence and arguments submitted in the Petitioner's subsequent response to the RFE.

The Director emphasized that this criterion is "limited to the visual arts." We disagree with the Director's interpretation that the plain language of the regulation renders this criterion applicable only to visual artists. The regulation requires only that the work displayed be a given petitioner's own work product and that the venues at which the individual's work was displayed be artistic exhibitions or showcases. 8 C.F.R. § 204.5(h)(3)(vii); *see also* USCIS Policy Memorandum PM 602-0005.1, *Evaluation of Evidence Submitted with Certain Form I-140 Petitions; Revisions to the Adjudicator's Field Manual (AFM) Chapter 22.2, AFM Update AD11-14* 9-10 (Dec. 22, 2010),

[1] We note that the [redacted] Film Festivals archived website indicates that the 2010 festival's award categories were limited to Best Movie, Best Screenplay, Audience Favorite Award, and Italian-American Heritage Award. *See* website of The [redacted] Film Festival, http://www.[redacted]FilmFest.com (accessed on Feb. 13, 2020).

https://www.uscis.gov/policymanual/HTML/PolicyManual.html (stating that officers should use the common dictionary definitions of "exhibition" and "showcase" in evaluating this criterion).

As certain exhibitions or showcases featuring performing artists meet the plain language of this regulation, the Director should not have summarily disregarded the Petitioner's evidence. For example, the Petitioner provided evidence that she has starred in stage productions of several plays and held lead roles in films screened at film festivals. The Director also noted that the Petitioner "submitted evidence which appears self-manufactured" and determined that such evidence is not probative, but did not identify the evidence he was referring to. As this matter will be remanded, the Director should re-examine the evidence submitted to satisfy the display criterion and make a new determination that takes into account this discussion.

Finally, the Director's decision addresses the criterion at 8 C.F.R. § 204.5(h)(3)(viii), which requires the Petitioner to submit evidence that she has performed in a leading or critical role for organizations or establishments that have a distinguished reputation. On appeal, the Petitioner asserts that the Director's analysis consisted solely of "boilerplate language that does not in any way discuss [her] specific leading roles" or "relate to the type of work [she] performs." We agree with the Petitioner that the limited one paragraph analysis of this criterion provided contains no specific references to the evidence or arguments she presented with the petition or in response to the RFE, and the Director's decision was deficient in this regard.

If the Director determines that the Petitioner satisfies at least three criteria after re-examining the evidence, his decision should include an analysis of the totality of the record evaluating whether she has demonstrated, by a preponderance of the evidence, her sustained national or international acclaim and whether the record demonstrates that she is one of the small percentage at the very top of the field of endeavor, and that her achievements have been recognized in the field through extensive documentation. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20.[2]

ORDER: The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.

[2] *See* USCIS Policy Memorandum PM 602-0005.1, *supra* at 4 (stating that USCIS officers should then evaluate the evidence together when considering the petition in its entirety to determine if the petitioner has established by a preponderance of the evidence the required high level of expertise of the immigrant classification).